

HOUSE BILL NO. 451

INTRODUCED BY J. KEANE

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A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE PETROLEUM TANK RELEASE COMPENSATION BOARD AND TRANSFERRING DUTIES TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTIONS 17-6-225, 75-11-302, 75-11-307, 75-11-308, 75-11-309, 75-11-312, 75-11-313, 75-11-314, 75-11-315, 75-11-318, 75-11-320, 75-11-407, AND 75-11-408, MCA; REPEALING SECTION 2-15-2108, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 17-6-225, MCA, is amended to read:

"17-6-225. Loans to ~~petroleum tank release compensation board~~ department of environmental quality. (1) The board of investments may loan funds to the ~~petroleum tank release compensation board~~ department of environmental quality to cover temporary cash shortfalls. The total of all loans may not exceed the greater of \$15 million or 80% of the fees that the office of budget and program planning projects will be collected under 75-11-314 during the next 3 fiscal years. A loan must be amortized, based on projected fee revenue, over a period of not more than 10 years.

(2) The board shall establish the interest rate on the loan, considering the security and the term of the loan."

Section 2. Section 75-11-302, MCA, is amended to read:

"75-11-302. Definitions. Except as provided in subsections (2), ~~(14)~~, and ~~(25)~~ (13), and (24), the following definitions apply to this part:

(1) "Accidental release" means a sudden or nonsudden release, neither expected nor intended by the tank owner or operator, of petroleum or petroleum products from a storage tank that results in a need for corrective action or compensation for third-party bodily injury or property damage.

(2) "Aviation gasoline" means aviation fuel as defined in 15-70-401. For the purposes of this chapter, aviation gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

~~(3) "Board" means the petroleum tank release compensation board established in 2-15-2108.~~



1 ~~(4)~~(3) "Bodily injury" means physical injury, sickness, or disease sustained by an individual, including
2 death that results from the physical injury, sickness, or disease at any time.

3 ~~(5)~~(4) "Claim" means a written request prepared and submitted by an owner or operator or an agent of
4 the owner or operator for reimbursement of expenses caused by an accidental release from a petroleum storage
5 tank.

6 ~~(6)~~(5) "Corrective action" means investigation, monitoring, cleanup, restoration, abatement, removal, and
7 other actions necessary to respond to a release.

8 ~~(7)~~(6) "Department" means the department of environmental quality provided for in 2-15-3501.

9 ~~(8)~~(7) "Distributor" means a person who is licensed to sell gasoline or special fuel, as provided in
10 15-70-402, and who:

11 (a) in the state of Montana, engages in the business of producing, refining, manufacturing, or
12 compounding gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution;

13 (b) imports gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution in this state;

14 (c) engages in wholesale distribution of gasoline, aviation gasoline, special fuel, or heating oil in this
15 state;

16 (d) is an exporter;

17 (e) is a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

18 (f) either blends gasoline with ethanol or blends heating oil with waste oil.

19 ~~(9)~~(8) "Eligible costs" means expenses reimbursable under 75-11-307.

20 ~~(10)~~(9) "Export" means to transport out of the state of Montana, by means other than in the fuel supply
21 tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline
22 terminal within the state of Montana.

23 ~~(11)~~(10) "Exporter" means a person who transports, by means other than in the fuel supply tank of a
24 motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal
25 within the state of Montana to a destination outside the state of Montana for sale, use, or consumption beyond
26 the boundaries of the state of Montana.

27 ~~(12)~~(11) "Fee" means the petroleum storage tank cleanup fee provided for in 75-11-314.

28 ~~(13)~~(12) "Fund" means the petroleum tank release cleanup fund established in 75-11-313.

29 ~~(14)~~(13) "Gasoline" means gasoline as defined in 15-70-401. For the purposes of this chapter, gasoline
30 does not include JP-4 jet fuel sold to a federal defense fuel supply center.

1 ~~(15)~~(14) "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No.
2 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils, including navy special fuel oil and bunker
3 C; and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation
4 of heating equipment, boilers, or furnaces.

5 ~~(16)~~(15) "Import" means to receive into a person's possession or custody first after its arrival and coming
6 to rest at a destination within the state any gasoline, aviation gasoline, special fuel, or heating oil shipped or
7 transported into this state from a point of origin outside this state, other than in the fuel supply tank of a motor
8 vehicle.

9 ~~(17)~~(16) "Operator" means a person in control of or having responsibility for the daily operation of a
10 petroleum storage tank.

11 ~~(18)~~(17) (a) "Owner" means:

- 12 (i) a person that holds title to, controls, or possesses an interest in a petroleum storage tank; or
13 (ii) a person that owns the property on which a petroleum storage tank from which a release occurred
14 was located.

15 (b) The term does not include a person that holds an interest in a storage tank solely for financial
16 security, unless through foreclosure or other related actions the holder of a security interest has taken possession
17 of the tank.

18 ~~(19)~~(18) "Person" means an individual, firm, trust, estate, partnership, company, association, joint-stock
19 company, syndicate, consortium, commercial entity, corporation, or agency of state or local government.

20 ~~(20)~~(19) "Petroleum" or "petroleum products" means crude oil or any fraction of crude oil that is liquid at
21 standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute) or
22 motor fuel blend, such as ethanol-blended gasoline, and that is not augmented or compounded by more than a
23 de minimis amount of another substance.

24 ~~(21)~~(20) "Petroleum storage tank" means a tank that contains or contained petroleum or petroleum
25 products and that is:

- 26 (a) an underground storage tank as defined in 75-11-503;
27 (b) a storage tank that is situated in an underground area, such as a basement, cellar, mine, drift, shaft,
28 or tunnel;
29 (c) an aboveground storage tank with a capacity of less than 30,000 gallons; or
30 (d) aboveground or underground pipes associated with tanks under subsections ~~(21)(b)~~ and ~~(21)(c)~~

1 ~~(20)(b)~~ and ~~(20)(c)~~, except that pipelines regulated under the following laws are excluded:

2 (i) the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. 1671, et seq.;

3 (ii) the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. 2001, et seq.; and

4 (iii) state law comparable to the provisions of law referred to in subsections ~~(21)(d)(i)~~ and ~~(21)(d)(ii)~~
5 ~~(20)(d)(i)~~ and ~~(20)(d)(ii)~~, if the facility is intrastate.

6 ~~(22)(21)~~ "Properly designed and installed double-walled tank system" means a petroleum storage tank
7 and associated product piping that is designed and constructed with rigid inner and outer walls separated by an
8 interstitial space and that is capable of being monitored for leakage. The design and construction of these tank
9 systems must meet any applicable standards of the department and the department of justice fire prevention and
10 investigation bureau. The material used in construction must be compatible with the liquid to be stored in the
11 system, and the system must be designed to prevent the release of any stored liquid.

12 ~~(23)(22)~~ "Property damage" means:

13 (a) physical injury to tangible property, including loss of use of that property caused by the injury; or

14 (b) loss of use of tangible property that is not physically injured.

15 ~~(24)(23)~~ "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing
16 of petroleum or petroleum products from a petroleum storage tank into ground water, surface water, surface soils,
17 or subsurface soils.

18 ~~(25)(24)~~ "Special fuel" means those combustible liquids commonly referred to as diesel fuel or another
19 volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum
20 gas. For the purposes of this chapter, special fuel does not include diesel fuel sold to a railroad or a federal
21 defense fuel supply center."

22

23 **Section 3.** Section 75-11-307, MCA, is amended to read:

24 **"75-11-307. Reimbursement for expenses caused by release.** (1) Subject to the availability of money
25 from the fund under subsection (6), an owner or operator who is eligible under 75-11-308 and who complies with
26 75-11-309 and any rules adopted to implement those sections must be reimbursed ~~by the board~~ from the fund
27 for the following eligible costs caused by a release from a petroleum storage tank:

28 (a) corrective action costs as required by a department-approved corrective action plan, except that if
29 the corrective action plan:

30 (i) addresses releases of substances other than petroleum products from an eligible petroleum storage

1 tank, the ~~board~~ department may reimburse only the costs that would have reasonably been incurred if the only
2 release at the site was the release of the petroleum or petroleum products from the eligible petroleum storage
3 tank; or

4 (ii) includes the establishment of a petroleum mixing zone, as defined in 75-11-503, the ~~board~~ department
5 may reimburse the cost of an easement established pursuant to 75-11-508; and

6 (b) compensation paid to third parties for bodily injury or property damage. The ~~board~~ department may
7 not reimburse for property damage until the corrective action is completed.

8 (2) An owner or operator may not be reimbursed from the fund for the following expenses:

9 (a) corrective action costs or the costs of bodily injury or property damage paid to third parties that are
10 determined by the ~~board~~ department to be ineligible for reimbursement;

11 (b) costs for bodily injury and property damage, other than corrective action costs, incurred by the owner
12 or operator;

13 (c) penalties or payments for damages incurred under actions by the department, ~~board~~, or federal, state,
14 local, or tribal agencies or other government entities involving judicial or administrative enforcement activities and
15 related negotiations;

16 (d) attorney fees and legal costs of the owner, the operator, or a third party;

17 (e) costs for the repair or replacement of a tank or piping or costs of other materials, equipment, or labor
18 related to the operation, repair, or replacement of a tank or piping;

19 (f) expenses incurred before April 13, 1989, for owners or operators seeking reimbursement from the
20 petroleum tank release cleanup fund and expenses incurred before May 15, 1991, for owners or operators
21 seeking reimbursement from the petroleum tank release cleanup fund for a tank storing heating oil for
22 consumptive use on the premises where it is stored or for a farm or residential tank with a capacity of 1,100
23 gallons or less that is used for storing motor fuel for noncommercial purposes;

24 (g) expenses exceeding the maximum reimbursements provided for in subsection (4);

25 (h) costs for which an owner or operator has received reimbursement or payment from an insurer or
26 other third party, including a grantor;

27 (i) expenses for work completed by or on behalf of the owner or operator more than 5 years prior to the
28 owner's or operator's request for reimbursement. This limitation does not apply to claims for compensation paid
29 to third parties for bodily injury or property damage. The running of the 5-year limitation period is suspended by
30 an appeal of the ~~board's~~ department's denial of eligibility for reimbursement. If a written request for hearing is filed

1 under 75-11-309, the suspension of the 5-year limitation period is effective from the date of the ~~board's~~
2 department's initial eligibility denial to the date on which the initial eligibility denial is overturned or reversed by
3 the ~~board~~ department, a district court, or the state supreme court, whichever occurs latest. The ~~board~~ department
4 may grant reasonable extensions of this limitation period if it is shown that the need for the extension is not due
5 to the negligence of the owner or operator or agent of the owner or operator.

6 (j) costs that the ~~board~~ department has determined are not actual, reasonable, and necessary costs of
7 responding to the release and implementing the corrective action plan, as provided for in 75-11-309, including
8 costs included in a department-approved corrective action plan for the purpose of remediating the release in
9 excess of department standards.

10 (3) An owner or operator may designate a person, including a grantor, as an agent to receive the
11 reimbursement for eligible costs incurred by the person if the owner or operator remains legally responsible for
12 all costs and liabilities incurred as a result of the release.

13 (4) Subject to the availability of funds under subsection (6):

14 (a) for releases eligible for reimbursement from the fund that are discovered and reported on or after April
15 13, 1989, from a tank storing heating oil for consumptive use on the premises where it is stored or from a farm
16 or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial
17 purposes, the ~~board~~ department shall reimburse an owner or operator for:

18 (i) 100% of the eligible costs, up to a maximum total reimbursement of \$500,000, for properly designed
19 and installed double-walled tank system releases that were discovered and reported on or after October 1, 1993,
20 and before October 1, 2009; or

21 (ii) 50% of the first \$10,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total
22 reimbursement of \$495,000 for all other releases; and

23 (b) for all other releases eligible for reimbursement from the fund that are discovered and reported on
24 or after April 13, 1989, the ~~board~~ department shall reimburse an owner or operator for:

25 (i) 100% of the eligible costs, up to a maximum total reimbursement of \$1 million, for properly designed
26 and installed double-walled tank system releases that were discovered and reported on or after October 1, 1993,
27 and before October 1, 2009; or

28 (ii) 50% of the first \$35,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total
29 reimbursement of \$982,500 for all other releases.

30 (5) If an insurer or grantor pays or reimburses an owner or operator for costs that qualify as eligible costs

1 under subsection (1), the costs paid or reimbursed by the insurer or grantor:

2 (a) are considered to have been paid by the owner or operator toward satisfaction of the 50% share
3 requirements of subsection (4)(a)(ii) or (4)(b)(ii) if the owner or operator receives the payment or reimbursement
4 before applying for reimbursement from the ~~board~~ department;

5 (b) are not reimbursable from the fund unless the grantor is designated by the owner or operator as an
6 agent to receive the reimbursement for eligible costs incurred by the grantor; and

7 (c) except for the amount considered to have been paid by the owner or operator pursuant to subsection
8 (5)(a), are considered to have been reimbursed from the fund for purposes of determining when the ~~board~~
9 department has paid the maximum amount payable from the fund under subsection (4)(a)(ii) or (4)(b)(ii).

10 (6) If the fund does not contain sufficient money to pay approved claims for eligible costs, a
11 reimbursement may not be made and the fund and the ~~board~~ department are not liable for making any
12 reimbursement for the costs at that time. When the fund contains sufficient money, eligible costs must be
13 reimbursed subsequently in the order in which they were approved by the ~~board~~ department."

14

15 **Section 4.** Section 75-11-308, MCA, is amended to read:

16 **"75-11-308. Eligibility.** (1) An owner or operator is eligible for reimbursement for the applicable
17 percentage as provided in 75-11-307(4)(a) and (4)(b) of eligible costs caused by a release from a petroleum
18 storage tank only if:

19 (a) the release was discovered on or after April 13, 1989;

20 (b) the release occurred from:

21 (i) an underground storage tank, as defined in 75-11-503, that was in compliance with 75-11-509 at the
22 time that the release was discovered;

23 (ii) a petroleum storage tank, as defined in 75-11-302, that was in compliance with the applicable state
24 and federal laws and rules that the ~~board~~ department determines pertain to the prevention and mitigation of a
25 petroleum release from a petroleum storage tank at the time that the release was discovered; or

26 (iii) an underground storage tank, as defined in 75-11-503, that the ~~board~~ department determines was
27 unknown to both the property owner and the department prior to its discovery if the owner applies to the
28 department for a closure permit in accordance with 75-11-212 within 30 days of the date upon which the owner
29 first had knowledge of the tank and closes the tank in accordance with the requirements of the permit before the
30 permit expires; and

1 (c) the release was an accidental release.

2 (2) An owner or operator is not eligible for reimbursement from the petroleum tank release cleanup fund
3 for expenses caused by releases from the following petroleum storage tanks:

4 (a) a tank located at a refinery or a terminal of a refiner;

5 (b) a tank located at an oil and gas production facility;

6 (c) a tank that is or was previously under the ownership or control of a railroad, except for a tank that was
7 operated by a lessee of a railroad in the course of nonrailroad operations;

8 (d) a tank belonging to the federal government;

9 (e) a tank owned or operated by a person who has been convicted of a substantial violation of state or
10 federal law or rule that relates to the installation, operation, or management of petroleum storage tanks; or

11 (f) a mobile storage tank used to transport petroleum or petroleum products from one location to
12 another."

13

14 **Section 5.** Section 75-11-309, MCA, is amended to read:

15 **"75-11-309. Procedures for reimbursement of eligible costs -- corrective action plans.** (1) An owner
16 or operator seeking reimbursement for eligible costs and the department shall comply with the following
17 procedures:

18 (a) If an owner or operator discovers or is provided evidence that a release may have occurred from the
19 owner's or operator's petroleum storage tank, the owner or operator shall immediately notify the department of
20 the release and conduct an initial response to the release in accordance with state and federal laws and rules
21 to protect the public health and safety and the environment.

22 (b) Except for a tank for which a permit is sought under 75-11-308(1)(b)(iii) and that is closed within 120
23 days of discovery of the release, following discovery of the release, the petroleum storage tank must remain in
24 compliance with applicable state and federal laws and rules that the ~~board~~ department determines pertain to
25 prevention and mitigation of petroleum releases.

26 (c) The owner or operator shall conduct a thorough investigation of the release, report the findings to
27 the department, and, as determined necessary by the department, prepare and submit for approval by the
28 department a corrective action plan that conforms with state, tribal (when applicable), and federal corrective
29 action requirements.

30 (d) (i) The department shall review the corrective action plan and forward a copy to a local government

1 office and, when applicable, a tribal government office with jurisdiction over a corrective action for the release.
2 The local or tribal government office shall inform the department if it wants any modification of the proposed plan.

3 (ii) Based on its own review and comments received from a local government, tribal government, or other
4 source, the department, subject to 75-11-408(4)(b), may approve the proposed corrective action plan, make or
5 request the owner or operator to modify the proposed plan, or prepare its own plan for compliance by the owner
6 or operator. A plan finally approved by the department through any process provided in this subsection (1)(d) is
7 the approved corrective action plan.

8 (iii) After the department approves a corrective action plan, a local government or tribal government may
9 not impose different corrective action requirements on the owner or operator.

10 (e) A corrective action plan prepared by the owner, operator, or department for any petroleum storage
11 tank release may include the establishment of a petroleum mixing zone as defined in 75-11-503.

12 (f) The department shall notify the owner or operator of its approval of a corrective action plan, which
13 may include a petroleum mixing zone pursuant to 75-11-508 and shall promptly submit a copy of the approved
14 corrective action plan to the board. Upon review, the board may request that the corrective action plan be
15 amended pursuant to 75-11-508 to include a petroleum mixing zone. If the department finds that the conditions
16 for establishment of a petroleum mixing zone in 75-11-508 are satisfied, the corrective action plan must be
17 amended to include a petroleum mixing zone.

18 (g) The owner or operator shall implement the corrective action plan or plans approved by the
19 department until the release is resolved. The department may oversee the implementation of the plan, require
20 reports and monitoring from the owner or operator, undertake inspections, and otherwise exercise its authority
21 concerning corrective action under Title 75, chapter 10, part 7, Title 75, chapter 11, part 5, and other applicable
22 law and rules.

23 (h) (i) The owner or operator shall document in the manner required by the ~~board~~ department all
24 expenses incurred in preparing and implementing the corrective action plan. The owner or operator shall submit
25 claims and substantiating documents ~~to the board~~ in the form and manner required by the ~~board~~ department.

26 (ii) The ~~board~~ department shall review each claim and determine if the claims are actual, reasonable, and
27 necessary costs of responding to the release and implementing the corrective action plan.

28 (iii) If the ~~board~~ department requires additional information to determine if a claimed cost is actual,
29 reasonable, and necessary, the ~~board~~ department may request comment from ~~the department~~ and the owner or
30 operator.

1 ~~(iv) If the department determines that an owner or operator is failing to properly implement a corrective~~
2 ~~action plan, it shall notify the board.~~

3 (i) The owner or operator shall document, in the manner required by the ~~board~~ department, any
4 payments to a third party for bodily injury or property damage caused by a release. The owner or operator shall
5 submit claims and substantiating documents ~~to the board~~ in the form and manner required by the ~~board~~
6 department.

7 (j) In addition to the documentation in subsections (1)(h) and (1)(i), when the release is claimed to have
8 originated from a properly designed and installed double-walled tank system, the owner or operator shall
9 document, in the manner required by the ~~board~~ department, the following:

10 (i) the date that the release was discovered; and

11 (ii) that the originating tank was part of a properly designed and installed double-walled tank system.

12 (2) If an owner or operator is issued an administrative order for failure to comply with requirements
13 imposed by or pursuant to Title 75, chapter 11, part 5, or rules adopted pursuant to Title 75, chapter 11, part 5,
14 all reimbursement of claims submitted after the date of the order must be suspended. Upon a written
15 determination by the department that the owner or operator has returned to compliance with the requirements
16 of Title 75, chapter 11, part 5, or rules adopted pursuant to Title 75, chapter 11, part 5, suspended and future
17 claims may be reimbursed according to criteria established by the ~~board~~ department. In establishing the criteria,
18 the ~~board~~ department shall consider the effect and duration of the noncompliance.

19 (3) The ~~board~~ department shall review each claim received under subsections (1)(h) and (1)(i), make
20 the determination required by this subsection, inform the owner or operator of its determination, and, as
21 appropriate, reimburse the owner or operator from the fund. Before approving a reimbursement, the ~~board~~
22 department shall affirmatively determine that:

23 (a) the expenses for which reimbursement is claimed:

24 (i) are eligible costs; and

25 (ii) were actually, necessarily, and reasonably incurred for the preparation or implementation of a
26 corrective action plan approved by the department or for payments to a third party for bodily injury or property
27 damage; and

28 (b) the owner or operator:

29 (i) is eligible for reimbursement under 75-11-308; and

30 (ii) has complied with this section and any rules adopted pursuant to this section. Upon a determination

1 by the ~~board~~ department that the owner or operator has not complied with this section or rules adopted pursuant
2 to this section, all reimbursement of pending and future claims must be suspended. Upon a determination by the
3 ~~board~~ department that the owner or operator has returned to compliance with this section or rules adopted
4 pursuant to this section, suspended and future claims may be reimbursed according to criteria established by the
5 ~~board~~ department. In establishing the criteria, the ~~board~~ department shall consider the effect and duration of the
6 noncompliance.

7 (4) (a) If an owner or operator disagrees with a ~~board~~ determination under subsection (3), the owner or
8 operator may submit a written request for a hearing ~~before the board~~.

9 (b) A written request for a hearing must be received by the ~~board~~ department within 120 days after notice
10 of the ~~board's~~ department's determination is served on the owner or operator by certified mail. The notice of
11 determination must advise the owner or operator of the 120-day time limit for submitting a written request for a
12 hearing ~~to the board~~. Not less than 50 days or more than 60 days after the ~~board~~ department serves the notice
13 of determination, the ~~board~~ department shall serve on the owner or operator a second notice by certified mail
14 advising the owner or operator of the deadline for requesting a hearing. Service by certified mail is complete on
15 the date shown on the certified mail receipt.

16 (c) If a written request is received within 120 days, the hearing must be held ~~at a meeting of the board~~
17 ~~or as otherwise permitted~~ under the Montana Administrative Procedure Act no later than 120 days following
18 receipt of the request or at a time mutually agreed to by the ~~board~~ department and the owner or operator.

19 (d) If a written request is not received within 120 days, the determination of the ~~board~~ department is final.

20 (5) The ~~board~~ department shall obligate money for reimbursement of eligible costs of owners and
21 operators in the order that the costs are finally approved by the ~~board~~ department.

22 (6) (a) The ~~board~~ department may, at the request of an owner or operator, guarantee in writing the
23 reimbursement of eligible costs that have been approved ~~by the board~~ but for which money is not currently
24 available from the fund for reimbursement.

25 (b) The ~~board~~ department may, at the request of an owner or operator, guarantee in writing
26 reimbursement of eligible costs ~~not yet approved by the board~~, including estimated costs not yet incurred. A
27 guarantee for payment under this subsection (6)(b) does not affect the order in which money in the fund is
28 obligated under subsection (5).

29 (c) When considering a request for a guarantee of payment, the ~~board~~ department may require pertinent
30 information or documentation from the owner or operator. The ~~board~~ department may grant or deny, in whole or

1 in part, any request for a guarantee."

2

3 **Section 6.** Section 75-11-312, MCA, is amended to read:

4 **"75-11-312. Review of corrective action plans and claims.** (1) To ensure that the fund provided for
5 in 75-11-313 is being used in the most efficient manner, the ~~board~~ department may implement a program of
6 third-party review for corrective action plans and claims. The ~~board~~ department may submit a corrective action
7 plan or claim for review by a qualified third party of the ~~board's~~ department's choosing.

8 (2) If a third-party review suggests that a corrective action plan is inappropriate for the release, the ~~board~~
9 ~~may remand the plan to the~~ department for shall conduct further review.

10 (3) If a third-party review suggests that submitted costs do not comply with the requirements of
11 75-11-309(3)(a), the ~~board~~ department may deny the costs, subject to 75-11-309(4)."

12

13 **Section 7.** Section 75-11-313, MCA, is amended to read:

14 **"75-11-313. Petroleum tank release cleanup fund.** (1) There is a petroleum tank release cleanup fund
15 in the state special revenue fund established in 17-2-102. The fund is administered as a revolving fund by the
16 ~~board~~ department and is statutorily appropriated, as provided in 17-7-502, for the purposes provided for under
17 subsections (3)(c) and (3)(d). Administrative costs under subsections (3)(a) and (3)(b) must be paid pursuant to
18 a legislative appropriation.

19 (2) There is deposited in the fund:

20 (a) all revenue from the petroleum storage tank cleanup fee as provided in 75-11-314;

21 (b) money received ~~by the board~~ in the form of gifts, grants, reimbursements, or appropriations, from any
22 source, intended to be used for the purposes of this fund;

23 (c) money appropriated or advanced to the fund by the legislature;

24 (d) money loaned ~~to the board~~ by the board of investments; and

25 (e) all interest earned on money in the fund.

26 (3) As provided in 75-11-318, the fund may be used only:

27 (a) to administer this part, ~~including payment of board expenses associated with administration;~~

28 (b) to pay the actual and necessary department expenses associated with administration;

29 (c) to reimburse owners and operators for eligible costs caused by a release from a petroleum storage
30 tank and approved by the ~~board~~ department; and

1 (d) for repayment of any advance and any loan made pursuant to 17-6-225, plus interest earned on the
2 advance or loan.

3 (4) Whenever the ~~board~~ department accepts a loan from the board of investments pursuant to 17-6-225,
4 the receipts from the fees provided for in 75-11-314 in each fiscal year until the loan is repaid are pledged and
5 dedicated for the repayment of the loan in an amount sufficient to meet the repayment obligation for that fiscal
6 year."

7

8 **Section 8.** Section 75-11-314, MCA, is amended to read:

9 **"75-11-314. Petroleum storage tank cleanup fee -- collection -- penalties -- warrant for distraint**
10 **-- statute of limitations.** (1) Except as provided in subsection (4), each distributor shall pay to the department
11 of transportation a petroleum storage tank cleanup fee for each gallon of gasoline, aviation gasoline, special fuel,
12 or heating oil distributed by the distributor within the state and upon which the fee has not been paid by any other
13 distributor. The fee must equal:

14 (a) 0.75 cent for each gallon of gasoline;

15 (b) 0.75 cent for each gallon of aviation gasoline;

16 (c) 0.75 cent for each gallon of special fuel; or

17 (d) 0.75 cent for each gallon of heating oil.

18 (2) Gasoline, aviation gasoline, special fuel, and heating oil exported or sold for export out of the state
19 must be included in the measure of a distributor's fee.

20 (3) Ethanol that is blended with gasoline to be sold as ethanol-blended gasoline is subject to the fee
21 provided in subsection (1).

22 (4) A fee may not be imposed or collected beginning on the first day of the first month in the first calendar
23 quarter after the unobligated balance in the fund equals or exceeds \$10 million. Whenever the unobligated fund
24 balance, less claims anticipated for ~~board~~ department approval within the next 90 days, is less than \$6 million,
25 the department of transportation shall, within 30 days, notify distributors by mail that the fee is reinstated
26 beginning on the first day of the first month that begins no less than 30 days after the date of the notice. Once
27 reinstated, the fee must be imposed and collected until the unobligated fund balance again equals or exceeds
28 \$10 million.

29 (5) The department of transportation shall collect the fee in the same manner as the gasoline tax and
30 special fuel tax under Title 15, chapter 70, part 4. The provisions of 15-70-103, 15-70-111, 15-70-402, 15-70-410,

1 15-70-411, 15-70-416 through 15-70-418, 15-70-420, 15-70-421, 15-70-425(3), and 15-70-443 apply to the fee.
 2 The provisions of 15-70-403, 15-70-412, 15-70-425(1), and 15-70-426 do not apply to the fee."

3

4 **Section 9.** Section 75-11-315, MCA, is amended to read:

5 **"75-11-315. Nonimpairment by state.** In accordance with the constitutions of the United States and the
 6 state of Montana, the state pledges that it may not in any way impair the obligations of any loan agreement
 7 between the ~~board~~ department and the board of investments by repealing the petroleum storage tank cleanup
 8 fee imposed by 75-11-314 or by reducing it below the amount necessary to make annual loan payments."

9

10 **Section 10.** Section 75-11-318, MCA, is amended to read:

11 **"75-11-318. Powers and duties of board department.** (1) The ~~board~~ department shall administer the
 12 petroleum tank release cleanup fund in accordance with the provisions of this part, including the payment of
 13 reimbursement to owners and operators. ~~The board may hire its own staff to assist in the implementation of this~~
 14 ~~part.~~

15 (2) The ~~board~~ department shall determine whether to approve reimbursement of eligible costs under the
 16 provisions of 75-11-309(3), shall obligate money from the fund for approved costs, and shall act on requests for
 17 the guarantee of payments through the procedures and criteria provided in 75-11-309.

18 ~~(3) The board may conduct meetings, hold hearings, undertake legal action, and conduct other business~~
 19 ~~that may be necessary to administer its responsibilities under this part. The board shall meet at least quarterly~~
 20 ~~for the purpose of reviewing and approving claims for reimbursement from the fund and conducting other~~
 21 ~~business as necessary.~~

22 ~~(4)~~(3) The ~~board~~ department shall use the fund to pay for:

23 (a) ~~department expenses incurred in providing assistance to the board. The board shall review and~~
 24 ~~comment on all department administrative budget proposals that are assessed against the fund prior to submittal~~
 25 ~~of the department budget for legislative approval. Department administrative expenses on behalf of the board may~~
 26 ~~include:~~

27 (i) the review or preparation of corrective action plans; and

28 (ii) the oversight of corrective action undertaken by owners and operators for the purposes of this part;

29 ~~and~~

30 ~~_____ (iii) the actual and necessary administrative support provided to the board.~~

1 (b) department of transportation staff expenses used for the collection of the petroleum storage tank
2 cleanup fee; and

3 (c) third-party review of corrective action plans or claims pursuant to 75-11-312;

4 ~~—— (d) board staff expenses; and~~

5 ~~—— (e) expenses of implementing the board's duties as provided in this part.~~

6 ~~(5)(4)~~ The ~~board~~ department shall adopt rules to administer this part, including:

7 (a) rules governing submission of claims by owners or operators to the department ~~and board~~;

8 (b) procedures for determining owners or operators who are eligible for reimbursement and determining
9 the validity of claims;

10 (c) procedures for the review and approval of corrective action plans;

11 ~~(d) procedures for conducting board meetings, hearings, and other business necessary for the~~
12 ~~implementation of this part;~~

13 ~~(e)(d)~~ the criteria and reimbursement rates applicable to those owners and operators who comply with
14 a violation letter issued by the department; and

15 ~~(f)(e)~~ other rules necessary for the administration of this part.

16 ~~(6)(5)~~ The ~~board~~ department may apply for, accept, and repay loans from the board of investments
17 pursuant to 17-6-225.

18 ~~(7)(6)~~ The ~~board~~ department shall conduct an analysis of the short-term and long-term viability of the
19 fund and report its findings to the ~~director of the department and the~~ legislative auditor by July 1 prior to each
20 regular legislative session. This analysis must include but is not limited to:

21 (a) trends in fund revenue and expenditure activity;

22 (b) exposure to long-term liabilities;

23 (c) impacts of changes in state and federal regulations relating to underground and aboveground storage
24 tanks;

25 (d) availability of petroleum storage tank liability insurance in the private sector and trends in provisions
26 of the insurance; and

27 (e) the continuing need for collection of all or part of the petroleum tank release cleanup fee."
28

29 **Section 11.** Section 75-11-320, MCA, is amended to read:

30 **"75-11-320. Other authorities unaffected.** Payment of reimbursement, approval of a corrective action

1 plan, or other action of the department ~~or the board~~ under this part does not affect the authority of the department
 2 or any other state agency to pursue an action authorized by Title 75, chapter 10, parts 4 or 7, or any other law
 3 or rule that applies to releases from petroleum storage tanks."
 4

5 **Section 12.** Section 75-11-407, MCA, is amended to read:

6 **"75-11-407. Viability.** (1) For the purpose of determining the viability of a responsible party, the
 7 department shall presume that:

8 (a) ongoing businesses or companies and government entities are viable unless there is information
 9 suggesting that the presumption is not appropriate and the department determines the information is sufficient
 10 to rebut the presumption in a particular case; and

11 (b) individuals and defunct or insolvent companies are not viable unless there is information suggesting
 12 that the presumption is not appropriate and the department determines the information is sufficient to rebut the
 13 presumption in a particular case.

14 (2) The department may not determine that a responsible party is viable based solely on the fact that
 15 the owner or operator of the petroleum tank release site is eligible to be reimbursed by the ~~petroleum tank release~~
 16 ~~compensation board established in 2-15-2108~~ from the petroleum tank release cleanup fund established in
 17 75-11-313.

18 (3) It is a grant recipient's responsibility to provide the department with sufficient financial information
 19 about a responsible party identified in a petroleum brownfields site eligibility application to determine whether the
 20 responsible party is a viable responsible party."
 21

22 **Section 13.** Section 75-11-408, MCA, is amended to read:

23 **"75-11-408. Brownfields site eligibility at petroleum tank release sites -- determinations and**
 24 **limitations.** (1) Before a grant recipient may expend federal brownfields funds at a petroleum tank release site,
 25 either the United States environmental protection agency or the department shall make a written determination
 26 that:

27 (a) the petroleum tank release site is of relatively low risk compared to other petroleum-contaminated
 28 sites;

29 (b) there is no viable responsible party for the petroleum tank release site;

30 (c) the petroleum tank release site will not be assessed, investigated, or cleaned up by a potentially liable

1 person; and

2 (d) the petroleum tank release site is not subject to an order under section 9003(h) of the federal Solid
3 Waste Disposal Act, 42 U.S.C. 6991b(h), or Title 75, chapter 11.

4 (2) After the department or the United States environmental protection agency determines that a
5 petroleum tank release site is eligible for federal brownfields funding, the department shall encourage and may
6 not limit the use of a grant recipient's federal petroleum brownfields funding at the site even if the site owner or
7 operator, as defined in 75-11-302, is eligible for funding from the petroleum tank release cleanup fund established
8 in 75-11-313.

9 (3) The department may not limit the use of money from the petroleum tank release cleanup fund
10 established in 75-11-313 when used as a commitment to a federal brownfields loan made by a grant recipient
11 for remediation at a petroleum tank release site.

12 (4) (a) Except as provided in subsection (4)(b), a determination made by the department or the United
13 States environmental protection agency that a petroleum tank release site is eligible for federal brownfields
14 funding does not limit or alter the owner's or operator's responsibility to assess or remediate the petroleum tank
15 release site in accordance with Title 75, chapter 11.

16 (b) If the department determines that a grant recipient has proposed to conduct a timely and
17 comprehensive remediation using federal brownfields funding at a petroleum tank release site that has been
18 determined by the department or the United States environmental protection agency to be eligible for petroleum
19 brownfields funding and the proposed remediation plan is expected to meet or exceed remediation standards
20 required by the department and financial commitments required by ~~the petroleum tank release compensation~~
21 ~~board pursuant to~~ Title 75, chapter 11, the department shall approve the comprehensive remediation plan and
22 allow for the use of federal brownfields funding at the petroleum tank release site."
23

24 **NEW SECTION. Section 14. Repealer.** The following section of the Montana Code Annotated is
25 repealed:

26 2-15-2108. Petroleum tank release compensation board.
27

28 **NEW SECTION. Section 15. Name change -- directions to code commissioner.** Wherever a
29 reference to the petroleum tank release compensation board appears in legislation enacted by the 2019
30 legislature, the code commissioner is directed to change it to a reference to the department of environmental

1 quality.

2

3 NEW SECTION. **Section 16. Effective date.** [This act] is effective July 1, 2019.

4 - END -